



IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

HOMER GREEN III, a/k/a JoJo,	§	
	§	
Petitioner,	§	
	§	
vs.	§	CIVIL ACTION NO. 4:05-2988-HFF-TER
	§	
JOHN L. LAMANNA,	§	
	§	
Respondent.	§	

ORDER ADOPTING THE REPORT AND RECOMMENDATION OF THE MAGISTRATE
JUDGE AND DISMISSING THE PETITION *WITHOUT PREJUDICE*

This case was filed as a Section 2241 action. Petitioner is proceeding *pro se*. The matter is before the Court for review of the United States Magistrate Judge's report and recommendation (report) in which he suggests that the Petition be dismissed *without prejudice* and without requiring Respondent to file a return. The report is made in accordance with 28 U.S.C. § 636 and Local Civil Rule 73.02 DSC.

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with the Court. *See Matthews v. Weber*, 423 U.S. 261, 270 (1976). The Court is charged with making a *de novo* determination of those portions of the report to which specific objection is made, and the Court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge or recommit the matter with instructions. *See* 28 U.S.C. § 636(b)(1).

The Magistrate Judge filed the report on November 9, 2005. Petitioner mailed his two page objection memorandum to the Clerk of Court on November 29, 2005.

In his objections, Petitioner states that he “agrees . . . that this instant petition be summarily dismissed without prejudice.” (Objections at 2.) Therefore, the Court will enter judgment accordingly. To the extent that Petitioner objects to the Magistrate Judge’s alleged failure to elaborate on Petitioner’s double jeopardy claim, the Court will overrule that objection. Simply stated, and as observed by the Magistrate Judge, “Since the petitioner is seeking relief from his conviction and sentence, the relief requested by the petitioner in the above-captioned matter is available, if at all, under 28 U.S.C. § 2255.” (Report at 3-4.) (citation omitted).

Therefore, after a thorough review of the report and the objections pursuant to the standard set forth above, the Court overrules Petitioner’s objections, adopts the report and incorporates it herein. Accordingly it is the judgment of this Court that the Petition be **DISMISSED** *without prejudice* and without requiring Respondent to file a return.

IT IS SO ORDERED.

Signed this 7th day of December, 2005, in Spartanburg, South Carolina.

s/ Henry F. Floyd
HENRY F. FLOYD
UNITED STATES DISTRICT JUDGE

NOTICE OF RIGHT TO APPEAL

Petitioner is hereby notified that he has a right to appeal this Order within sixty (60) days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.